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/SENSITIVE/HVCCO

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.



Address Reply to the
Division Indicated
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OLC:KCB:ca

20 MAR 1979

**MEMORANDUM TO THE DEPUTY ASSISTANT TO THE PRESIDENT
FOR NATIONAL SECURITY AFFAIRS**

Re: Minutes of the March 6, 1979 SCC Meeting --
Necessity for a Presidential Finding for

25X1

25X1 The Minutes of the March 6, 1979 SCC Meeting state that it was agreed that no Hughes-Ryan Finding was needed for the proposed joint CIA-NSA SIGINT assistance program to [redacted]. On behalf of the Department of Justice, I did not agree with that conclusion at the meeting. It was suggested at the meeting that the SCC approve the proposal and note Justice's opinion. I agreed with that suggestion, assuming the minutes would show that we believed a Finding was required. (TS/HVCCO)

The Hughes-Ryan Amendment requires a Presidential Finding before any funds may be expended by CIA for operations in foreign countries unless the operation is "intended solely for obtaining necessary intelligence." (Emphasis added). There is no ambiguity in the word "solely" and there is nothing in the legislative history of the Amendment to support a conclusion that Congress did not mean what it said when it used that word. While there is no doubt that the primary purpose of the Hughes-Ryan Amendment was to require reporting to Congress about "covert actions", the legislative history clearly shows that the provision was designed to cover "covert and other activities which may have important foreign policy implications." H. Rept. 93-1471, 93d Cong., 2d Sess., at 44 (emphasis added).

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Classified and extended by CIA 79 7
Review on 21 February 1999

SC-05138-79

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DOJ Review Completed

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The Hughes-Ryan Amendment is not limited to classic covert action, but was intended to cover other CIA activities. Thus, the legal issue in this case is a rather simple one: is the proposed activity one that is intended solely to gather necessary intelligence? (U)

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The presentation of this proposal to the SCC did not show that it was intended solely to gather intelligence. The thrust of the presentation was that [redacted] desired, for its own interests, to expand its SIGINT capabilities and that our Government desired to assist them in this undertaking as part of a comprehensive program designed to improve intelligence liaison, reassure the [redacted] of United States support, and assist [redacted] and their neighbors to resist military activities undertaken by the [redacted]. The proposal stated that CIA had terminated a joint SIGINT program with [redacted] in 1976 and had previously been "unwilling to participate in a major joint collection effort." The Director of NSA candidly told the SCC that our Government does not expect to get much intelligence from this program. Finally, neither the Director of Central Intelligence nor any other senior intelligence official has, to our knowledge, stated that the program is being undertaken solely to gather necessary intelligence.* On the basis of these facts, I am unable to conclude that the proposal is undertaken solely to gather necessary intelligence and I therefore believe a Finding is required under the Hughes-Ryan Amendment. (TS/HVCCO)

[redacted] 25X1
Attorney-Adviser
Office of Legal Counsel

✓cc: Director of Central Intelligence

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*/ In this connection it is useful to contrast this proposal with an earlier proposal to provide satellite photographic information to [redacted] (CIA Paper No. 77 25A). That proposal stated that it was "an activity solely related to the collection of intelligence." No such statement has been made in connection with this proposal.

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MEMORANDUM FOR:

Eel-

SCC on Legislative Charter

27 March 79

DDCI attended

Jay

PSM re This

Date

FORM 5-75 101 USE PREVIOUS EDITIONS

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79-3464/2

THE SECRETARY OF STATE
WASHINGTON

March 22, 1979

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TO:

MEMORANDUM FOR: Dr. Zbigniew Brzezinski
The White House

FROM: Cyrus Vance *CV*

SUBJECT: Request for SCC Meeting to Consider
Standards for Sensitive Collection
Operations (Sections 1-303 and
1-306 of E.O. 12036)

As I indicated before you left for the Middle East, we need to submit proposed standards under Section 1-303 to the President for his consideration. Staff efforts to reach agreement on a draft have not been successful; I suggest that the SCC meet on this issue very soon.

In my view, the standards and procedures should be governed by the following principles:

1. The DCI should refer all proposals for sensitive collection to the SCC Chairman in writing. The criteria for determining which collections are "sensitive" should distinguish between operations that must be referred to the SCC Chairman (collections in which a Head of State is the source or target, for example), and those that the DCI has discretion to refer. ✓

2. Sensitive collections normally should be reviewed and approved in advance by the SCC at a meeting, pursuant to written proposals. In exigent circumstances

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GDS

3/20/85 (Vance, Cyrus)

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where time is of the essence, proposals can be reviewed and approved by SCC members by secure telephone, followed by written confirmation.

3. The SCC may determine that certain categories of sensitive collections are routine, and may be approved by the SCC Chairman. The SCC should review records of such operations periodically, perhaps quarterly.

4. The annual review required by Section 1-306 should include a review of ongoing operations as well as a review of the DCI's categorization of operations as sensitive.

5. To insure proper security, access to records maintained for purposes of Section 1-303 and Section 1-306 should be tightly controlled, and such records should be stored at the CIA when they are not being used.

cc: The Attorney General
 The Secretary of Defense
 The Director of Central Intelligence

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(Security Classification)

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Warning Notice

Sensitive Intelligence Sources and Methods Involved

NATIONAL SECURITY INFORMATION

Unauthorized Disclosure Subject to Criminal Sanctions

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(Security Classification)


DISSEMINATION CONTROL ABBREVIATIONS

NOFORN-	Not Releasable to Foreign Nationals
NOCONTRACT-	Not Releasable to Contractors or Contractor/Consultants
PROPIN-	Caution-Proprietary Information Involved
USIBONLY-	USIB Departments Only
ORCON-	Dissemination and Extraction of Information Controlled by Originator
REL ...	This Information has been Authorized for Release to ...

Office of General Counsel


7 March 1979

NOTE FOR:


NSC Staff

Sam:

You have asked for enumeration of additional outstanding issues, not already addressed in SCC deliberations thus far or in any of the issues papers currently under development, and in response to that request Rick has produced the attached memorandum. I agree that this memorandum fairly enumerates the remaining issues.


Attachment

7 March 1979

25X1 MEMORANDUM FOR :

25X1 FROM :
Assistant General Counsel

SUBJECT : Additional Charter Legislation Issues for
the SCC

1. As you know, the SCC has addressed the issues relating to collection of foreign intelligence that concerns U.S. persons, and issue papers are in various stages of development as regards review and approval of special activities and certain foreign intelligence collection or counterintelligence activities, collection of counterintelligence information that concerns U.S. persons, "physical and personnel security investigations" (presumed by me to include inquiries into violations of security regulations and procedures, pre-employment and security clearance investigations, and investigations into threats to facilities or activities and personnel), and recruitment and source investigation activities. We pointed out to the NSC staff that it may be necessary to address additional issues relating to other types of activities and Sam Hoskinson has asked that we supply him an "informal" list of such areas. I have listed below the various remaining areas I perceive, based largely on a review of the working group's Title II Issue Paper, along with a suggestion for the responsible agency, for your consideration and communication to Sam. The SSCI positions noted are derived from the Bill Miller letter annexed to the Title II Issue Paper.

2. Retention and Dissemination (DOD/FBI): Whether the statute should include detailed retention provisions, only a "relevant" standard, or include no standard, leaving it to collection and dissemination controls and the Privacy Act to limit the nature of information that is obtained and the uses to which it may be put. Similarly, whether the dissemination provisions should be detailed, include only general principles, or be governed by Attorney General procedures. The SSCI also has noted issues in this area concerning controls on dissemination to foreign governments, and provision of intelligence to Congress (although this latter may be wrapped up in the as-yet-unresolved Title I, §152 issue).

3. Collection (CIA/DOD): Even after the SCC has considered collection of foreign intelligence (including narcotics, presumably), counterintelligence (directly or indirectly, including counterterrorism, presumably), "security investigations," and potential source collection, there may be several miscellaneous issues remaining in the collection area. There is still the issue, raised also by the SSCI, of whether collection concerning foreign persons in the U.S. should be regulated. In addition, although this may be accounted for in procedures, the SSCI has restated the need for initial approvals, periodic renewals, and annual AG review, of all collection that concerns U.S. persons. Also, the issue of "catch-all" collection authority may remain, although this type of provision may be unnecessary if flexibility of the same sort provided by authorizing NSC determinations of "essential" and "important" foreign intelligence is carried through to the other types of collection. Finally, there is the question of whether there should be authority for the collection of information relating to communications security and whether it should be outside AG procedures governing other types of collection.

4. Other Intelligence Activities: There are several other aspects of intelligence activity that appear to raise substantial issues.

a. Cover and U.S. Organizations (CIA/FBI): There is the issue of whether and to what extent unwitting, unconsenting U.S. organizations should be used for cover purposes by intelligence entities. Unless fully encompassed, which I doubt, by the SCC determination as to "placing" agents in U.S. organizations for foreign intelligence collection purposes, this issue would include as a factor the exclusion, itself an issue, of the FBI from the definition of "cover." A related issue, also raised by the SSCI, concerns the authority for undisclosed participation in U.S. organizations in order to develop cover (assuming that it has not already been decided that this activity should be authorized and governed only by AG procedures).

note #
4 in DCI
letter to
action
←

b. Relations with Certain Professions (CIA): The permissibility, and appropriate scope, of use for intelligence purposes of persons associated with the Peace Corps, exchange programs, academic and religious institutions, and the media, are issues raised by the SSCI and executive branch agencies.

c. Information Programs (CIA): This is the "blowback" problem, i.e., the control of information distribution programs abroad by intelligence entities where there is a risk of redistribution in the U.S.

5. Remedies (DOJ): This would include issues regarding the appropriate scope and nature of statutory remedies to be created for violations of the charter or the Constitution, such as whether the class of potential plaintiffs should be limited to nonforeign agents, whether the proper basis for an action should be limited to circumstances where the "primary purpose" of the activity was such a violation, and whether the DOJ amendments to the Tort Claims Act should be adopted.

6. Miscellaneous (DOD): The issues here would relate to whether the DNI should be involved in the development of AG-approved procedures, what restrictions the President should be empowered to waive and in what circumstances (raised by the SSCI), and whether expert assistance to law enforcement entities should be subject to AG procedures.

25X1

OGC/ARC/lv

Distribution:

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